UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

INERNATIONAL BROTHERHOOD OF TEAMSTERS (IBT), LOCAL 957 (United Parcel Service) **CASE NO. 09-CB-255762**

Respondent,

and

RYAN BLACK, AN INDIVIDUAL

Charging Party

RESPONDENT'S BRIEF TO ADMINISTRATIVE LAW JUDGE

I. INTRODUCTION

This case came before Administrative Law Judge Kimberly Sorg-Graves on August 26, 2020 by video conference upon the General Counsel's Complaint against Respondent, General Truck Drivers, Warehousemen, Helpers, Sales and Service, and Casino Employees, Teamsters Local Union No. 957, and affiliated with the International Brotherhood of Teamsters ("Respondent" "Local 957" or "Union") (referred to in the case caption as International Brotherhood of Teamsters (IBT), Local 957). The Complaint was based on an unfair labor practice charge filed by Charging Party, Ryan Black, a member of Local 957 employed by United Parcel Service (UPS) as a package car delivery driver at all times relevant herein. ("Charging Party" or "Black") In his original charge filed on February 4, 2020 Charging Party alleged: "Since about

September 9, 2019 the above-named labor organization has restrained and coerced employees in the exercise of rights protected by Section 7 of the Act by refusing to process the grievance regarding accepted overtime pay regarding Ryan Black for arbitrary or discriminatory reasons or in bad faith."[1] On March 2, 2020 Charging Party filed a First Amended Charge alleging "Within the last 6 months, and continuing, the above-named labor organization has failed and refused to communicate with Ryan Black regarding the status of grievances that he has filed over not receiving exclusive overtime pay. Such conduct is arbitrary, a breach of the duty of fair representation, and violates section 8(B)(1)(A) of the Act." The First Amended Complaint did not include the allegations set forth in the original charge filed by the Charging Party on February 4, 2020.

The Complaint alleges that Respondent violated Section 8(b)(1)(A) of the Act and failed to represent Black for reasons that are arbitrary, discriminatory or in bad faith since August 26, 2019, and continuing thereafter, by refusing to provide Black with information regarding the status of his excessive overtime pay grievances filed by Black on or about July 26, 2019 and September 17, 2019. (GC Ex. 1(g), ¶ 6(d), (e) and (f)) In support of those general allegations, the Complaint contains three specific instances of the alleged violation of Section 8(b)(1)(A) of the Act as follows:

6(a) About August 2, 2019, and continuing thereafter, Black, orally, who is a member of the Union, asked Respondent to provide him with information regarding the status of excessive overtime pay grievances filed on his behalf on about July 26, 2019 and September 17, 2019.

[1] General Counsel Exhibits referred to as GC Ex. ___, Respondent's Exhibits referred to as RX. ___. Transcript for the hearing referred to as Tr. ____.

(b) About September 20, 2019, Black orally by telephone, asked Respondent to provide him with information regarding the status of excessive overtime pay grievances filed on his behalf on about July 26, 2019 and September 17, 2019.

(c) About January 28, 2020, Black, in writing via text message, asked Respondent to provide him with information regarding the status of excessive overtime pay grievances filed on his behalf on about July 26, 2019 and September 17, 2019.

At the beginning of the hearing, Respondent's Counsel brought to the attention of the Administrative Law Judge (ALJ) that the Complaint failed to comply with section 102.15(b) of the Board's Rules and Regulations. Counsel for the General Counsel amended the allegations contained in paragraph 6(a)(b) and (c) making them more specific in regard to the name of Respondent's agents, place of any verbal communications and the type of verbal communications involved in said allegations. In response to the amendments made during the hearing to paragraphs 6(a), (b) and (c), Respondent maintained its denial of all of the allegations in paragraphs 6(a), (b) and (c) except Respondent admitted in regard to the allegations contained in paragraph 6(c) of the amended allegations that a text message was sent by Black to Respondent's Agent Kenny Howard on January 28, 2020. Respondent maintained its denial on all of the other allegations contained in the Complaint.

Respondent respectfully submits that the evidence presented at the hearing does not establish that Respondent violated Section 8(b)(1)(A) of the Act in regard to its communications with Black concerning his July 26, 2019 and September 17, 2019 grievances. On the contrary, the evidence introduced at the hearing established that Black was aware of the status of his grievance but was dissatisfied and/or frustrated that a local level hearing was not scheduled on his grievances

as quickly as he desired. Therefore, Respondent urges that the Complaint be dismissed in its entirety.

II. FACTS

Respondent is a large local union with approximately 4000 members in the Dayton, Ohio area. Respondent represents bargaining unit members of UPS in facilities located in Springfield, Piqua, Dayton and West Carrollton, Ohio. The UPS West Carrollton facility has approximately 375 bargaining unit members while the other three facilities have approximately 110 to 120 bargaining unit members each. (Tr. 195) The West Carrollton facility has seven stewards at the facility in different areas with the stewards representing different bargaining unit members in the various areas. At all times relevant herein, Matt Thomes was the steward representing the Southwest Center at the UPS West Carrollton facility and was the steward for the package car delivery drivers in the Southwest Center where Black was assigned. (Tr. 197-198)

At all time relevant and material herein, Kenny Howard was the President and Business Representative of Respondent and a former UPS employee of over 32 years. (Tr. 187-189) For most of his employment at UPS, Mr. Howard was a package car delivery driver working out of the UPS Springfield facility. During his tenure of employment at the UPS Springfield facility Mr. Howard was a Union Steward who helped process grievances on behalf of the bargaining unit members working out of the UPS Springfield facility. (Tr. 193, 196-197)

The UPS bargaining unit members represented by Respondent are covered by three separate agreements: The Master Agreement negotiated on a national level for all UPS employees throughout the United States, a Regional Agreement, referred to as the Central Region Agreement, for UPS bargaining unit members in the Central Region, including Ohio, and an Ohio Rider which applies only to the UPS bargaining unit members working at a UPS facility located in Ohio. These

three agreements are included in a booklet available to each bargaining unit member. (Tr. 196-197)

Mr. Howard explained that grievances are prepared by the bargaining unit members and given to the steward representing the bargaining unit member for filing with UPS, with a copy being sent to Respondent by the designated Steward. (Tr. 204) After the grievances are filed with the Employer and provided to Respondent, if the grievance remains unresolved, a local level hearing will be scheduled on all of the grievances pending. The scheduling of the local level hearing is the result of discussions between the UPS Labor Manager and Mr. Howard in accordance with their respective schedules and the schedules of other participants in the local level hearing. (Tr. 204-207) According to Mr. Howard, the bargaining unit members at the UPS West Carrollton facility file many more grievances than the other three UPS facilities in the Dayton area combined.

Based on his experience as a UPS steward at the UPS Springfield facility, Mr. Howard provides the Union stewards at each of the UPS facilities Respondent represents the opportunity and the responsibility to select the grievances which are going to be heard at the next scheduled local level hearing. (Tr. 212-213) As Mr. Howard explained on cross examination, he provides the stewards the opportunity to select the grievances to be heard at the local level hearing "because sometimes we have a hot topic that, if we hear those grievances, it might resolve a bunch of stuff if it's a newer grievance but it might resolve a problem that is widespread through the center so he might have a current grievance and old grievances it just depends on what grievance is out there." (Tr. 244-245) According to Mr. Howard's response to questions on cross examination, the bargaining unit members are aware of this process of selecting grievances to be heard at the local

level hearing because he discusses the process in craft meetings for the UPS bargaining unit members. (Tr. 246)

On July 26, 2019 Black filed a grievance, referred to during the hearing as a "9.5 grievance," alleging that UPS violated Article 37 of the collective bargaining agreement by working Black in excess of 9.5 hours for three days within a work week which, under Article 37, would obligate the Company to pay Black "penalty" pay. (Tr. 46, 48-49; GC Ex. 3b) Black also filed a "9.5 grievance" on September 17, 2019 making the same allegations. On both occasions Black prepared the grievances and handed the grievance forms to his steward Mr. Thomes. According to his testimony during the hearing, Black had telephone conversations with Mr. Thomes almost on a daily basis after filing his two grievances on July 26, 2019 and September 17, 2019. (Tr. 50-52)

According to Black, his conversation with Mr. Thomes consisted primarily with asking Mr. Thomes when his grievances would be heard. In response to a question from the counsel for the General Counsel of what did Black and Mr. Thomes talk about Black responded: "[S]pecifically, when they would be heard or when – when they would be heard that's basically the nutshell." (Tr. 51) Black later explained that being heard was when would a local level hearing be held to address the grievance. Black also testified that Mr. Thomes told him that once the grievances were filed it was up to Mr. Howard to schedule the grievance because Mr. Howard handles all of the grievance hearings. (Tr. 52; 57)

On September 20, 2019 Black testified that he made a call to the cell phone number of Mr. Howard at 12:47 p.m., for which he was billed for two minutes. Black testified that he left a voicemail message for Mr. Howard. (Tr. 66) According to Black, the voicemail message he left consisted of the following:

Q. Okay, and what did you convey to Mr. Howard on that voicemail?

A. To please call me, I had some questions concerning my grievances and to call me as soon as he could.

Q. Okay

A. I left my name and phone number in the phone message

(Tr. 66-67; GC Ex. 5C, p. 74) According to Black, Mr. Howard did not call him back regarding his voice message.

The next attempt by Black to contact Mr. Howard occurred on January 28, 2020 when he sent a test message to Mr. Howard. (GC Ex. 6A and 6B; Tr. 74-75) According to Black, he was attempting to convey in the text message that he was wanting information on when his grievances would be heard. (Tr. 74-75) Seven days after Black sent his text message to Mr. Howard on January 28, 2020 Black filed his original charge with the Board. (GC Ex. 1(a)) After conducting an investigation, including receipt of an affidavit from Black dated February 16, 2020, Black filed a First Amended Charge against Respondent. (GC Ex. 1(c)) The allegations in the First Amended Charge are completely different than the allegations contained in the original charge and the First Amended Charge does not include any of the allegations contained in the original charge. (GC Ex. 1(a))

After completing its investigation, the Acting Regional Director for Region 9 issued a Complaint and Notice of Hearing against Respondent dated April 24, 2020 based solely on the interpretation of Section 8(b)(1)(A) of the Act by General Counsel Peter B. Robb, as set forth in Memorandum GC 19-01 issued October 24, 2018. Additionally, General Counsel Robb directed Regions to apply these new principles to Section 8(b)(1)(A) duty of fair representation cases, and issue complaints where appropriate.

III. LEGAL ANALYSIS AND AGRUMENT

A. The Duty of Fair Representation

In Steele v. Louisville & Nashville Railway Co., 323 U.S. 192 (1944), the Supreme Court judicially-created the duty of fair representation in a race discrimination case where the labor union negotiated collective bargaining agreement provisions that excluded black locomotive firemen from service in favor of white firemen. Not until 1962 did the Board acknowledge the duty of fair representation as an unfair labor practice under Sections 8(b)(1)(A) or 8(b)(2) of the Act in Miranda Fuel Co., 140 NLRB 81 (1962), enf'd denied 326 F.2d 172 (2nd Cir. 1963).

In Vaca v. Sipes, 386 U.S. 171, 190 (1967) Supreme Court held that a union does not breach its duty of fair representation to a member unless its actions are "arbitrary, discriminatory or in bad faith. The Vaca Court was dealing with an allegation that a union violated its duty of fair representation in a grievance process setting. In Air Line Pilots Ass'n Int'l v. O'Neill, 499 U.S. 65, 78 (1991), a case involving an allegation of the breach of the duty of fair representation in a negotiation setting, the Court held that courts, should apply a "highly differential" standard when reviewing the conduct of a union to determine whether it had fulfilled its duty of fair representation toward a member. The Board in agreement with the Supreme Court decision in O'Neill held that: "[a] union's actions are considered arbitrary if the union has acted 'so far outside a wide range of reasonableness' as to be irrational." Operating Engineers, Local 18, 362 NLRB 1438, 1444 (2015) (citations omitted)

In Central Ky. Branch, 361, Nat'l Ass'n of Letter Carriers, 367 NLRB No. 19 (Oct. 16, 2018) the Board held: "… the Board has established that something more than mere negligence, poor judgment, or ineptitude in grievance handling is needed to establish a breach of the duty of fair representation" (citations omitted) Eight days following the Board's decision in Central Ky.

Branch, 361, Nat'l Ass'n of Letter Carriers, General Counsel Robb issued General Counsel Memorandum 19-01 (GC Memo 19-01) In GC Memo the General Counsel offered "the following clarification for Regions to apply in duty of fair representation cases. In cases where a Union asserts a mere negligence defense based on its having lost track, misplaced or otherwise forgotten about a grievance, whether or not it had committed to pursue it, the union should be required to show the existence of established, reasonable procedures or systems in place to track grievances, without which, the defense should ordinarily fail. Similarly, a union's failure to communicate decisions related to a grievance or to respond to inquiries for information or documents by the charging party, in the General Counsel's view, constitutes more than mere negligence and, instead, rises to a level of arbitrary conduct unless there is a reasonable excuse or meaningful explanation." (Id.)

In GC Memo 19-01 the General Counsel recognized that his new approaches "may be inconsistent with the way Regional Directors may have historically interpreting duty of fair representation law." However, the General Counsel directed Regional Directors "to apply the above principles to Section 8(b)(1)(A) duty of fair representation cases, and issue complaint where appropriate." By giving such direction, the General Counsel has ignored over 50 years of legal precedent.

B. The Complaint Allegations in Paragraph 6(a)

Paragraph 6(a) of the Complaint as amended reads: "On or about August 26, 2019, and continuing thereafter, Black, orally, who is a member of the Unit asked Respondent, through Union Steward Matt Thomes, to provide him with information regarding the status of excessive overtime grievances filed on his behalf on or about July 26, 2019 and September 17, 2019."[2]

[2] As amended during the hearing by Counsel for General Counsel. (Tr. 30-31)

Even though it is alleged in paragraph 6(a) of the Complaint that Black started requesting information regarding the status of his excessive overtime grievances on or about August 26, 2019, Black testified at the hearing that he began making phone calls to Mr. Thomes in July 2019 wanting to know when his grievances would be heard and in what order. (Tr. 119-120) Black admitted he knew at that time that his July 26, 2019 grievance was still pending and he just wanted information concerning when it would be heard at the local level. (Tr. 120) Black testified that he was contacting Mr. Thomes almost daily either in person or over the telephone asking Mr. Thomes about the status of his grievance. (Tr. 116, 131, 138) Black also testified at the hearing that he was requesting from Mr. Thomes when his grievance would be scheduled for hearing and Mr. Thomes advised him that Mr. Howard schedules the local level hearing dates. He was even told by Mr. Thomes that Mr. Thomes was advised by Mr. Howard that no date had been set yet for his grievance to be heard at the local level hearing. (Tr. 128-129) Black also admitted during his testimony that during all of the calls between July through February 5 other than where voicemail messages may have been left, Mr. Thomes told Black that Mr. Howard indicated that the grievances were still pending. (Tr. 131) Black also testified during the hearing that at no time did Mr. Thomes tell Black that he (Mr. Thomes) did not want to talk to Black about his grievances, that Mr. Thomes was not going to talk to Black about his grievances or refused to talk to Black about his grievances. (Tr. 131-132) Black also testified that there was nothing that prohibited him from directly contacting Mr. Howard between July 2019 and September 19, 2019. Instead Black testified that it was his understanding that the proper procedure was to go through the steward and that the steward would go through the Union hall. (Tr. 133)

The evidence introduced at the hearing establishes that beginning on or about August 26, 2019 through February 5, 2020 Black received all of the information he requested from Mr.

Thomes during the numerous telephone calls with Mr. Thomes and/or through their in-person contacts at the UPS West Carrollton facility. While Black was told by Mr. Thomes that Mr. Howard would schedule the local level hearing, Black also acknowledged that he knew that when his grievances were going to be heard, he would generally receive that information from Mr. Thomes. (Tr. 130)

The Complaint alleges in paragraph 6(d) of the Complaint that on or about August 26, 2019 and continuing thereafter Respondent failed and refused to provide Black with information regarding his status of his excessive pay grievances. The evidence does not support this allegation in relationship to paragraph 6(a) of the Complaint. Black repeatedly testified that when he contacted Mr. Thomes, Mr. Thomes would tell him that his grievances were still pending, that it was up to Mr. Howard to schedule the local level hearing on his grievances and that no hearing had yet been scheduled for his grievances. All of the information given to Black by Mr. Thomes was accurate and truthful from August 26, 2019 up to and including the date of the filing of the initial charge on February 4, 2020, and accurate and truthful through the filing of the First Amended Charge on March 2, 2020. Black may have been dissatisfied that a local level hearing had not yet been scheduled for his excessive pay grievances filed in July and September of 2019, but there is no evidence that the grievances filed by Black were treated any differently than grievances filed by other bargaining unit members employed at the UPS West Carrollton facility. (Tr. 120)

The allegations contained in paragraph 6(d) of the Complaint as related to Mr. Thomes' conversations with Black from August 26, 2019 through March 2, 2020 falls squarely within the "reasonable excuse or meaningful explanation" defense where Respondent provided information concerning Black's inquiries as to the status of his grievances and when a hearing may be held.

Black was simply dissatisfied with the response. Black was provided with all of the information that was available during the period of time in question and any failure to provide any additional explanation would not rise to the level of a violation of Section 8(b)(1)(A) of the Act.

C. The Complaint Allegations in Paragraph 6(b)

Paragraph 6(b) of the Complaint as amended reads: "About September 20, 2019 Black orally, by telephone, through a voicemail message to union president Kenny Howard, asked Respondent to provide him with information regarding the status of excessive overtime grievances filed on his behalf on July 26, 2019 and September 17, 2019.[3] Black testified that he placed a call to Mr. Howard's cell phone on September 20, 2019 and left a voicemail message. (Tr. 66) Black also testified that the voicemail message was to have Mr. Howard call him back, that he had some questions regarding his grievances and call him as soon as he could. Black also testified that he left his name and phone number in the message.

The phone records of Black indicated that he was billed for two minutes for a phone call to Mr. Howard's cell phone number on September 20, 2019 at 12:47 p.m. Mr. Black's phone records (GC Ex. 5C at pg. 74) do not indicate that a voicemail message was left for Mr. Howard, nor does Black's phone bill records for September 20, 2019 establish that the call lasted two minutes. All of the phone calls on Black's phone bill records have only full minute charges. There is no charges listed on Black's phone bill message of a phone call lasting one and a half (1 ½) or three and a half (3 ½) minutes. Instead, like most cell phone companies, Black's phone call records indicate a rounding, more than likely rounding up, of any call more than a sixty-second-time frame. In other words, a phone call lasting sixty-one seconds would show on Black's phone bill as being charged for two minutes.

[3] As amended during the hearing by Counsel for General Counsel. (Tr. 30)

Mr. Howard denied that he ever received a phone call from Black on September 20, 2019 and that he never received a voicemail message from Black on September 20, 2019. Mr. Howard testified that he tries to answer every phone call he receives when he receives it in order to avoid going through the process of calling people back if the call goes to voicemail, or if he misses a call because he is in a meeting. (Tr. 220-201) Mr. Howard further testified that he tries to call people back if he happens to miss a call or gets a voicemail and usually, in the evening before he leaves work or after he gets home, he will look through his phone records and scroll to try to find any miss calls or voice messages and call them back that night or the next morning. (Tr. 221) Mr. Howard testified creditably and without hesitation that he did not receive a phone call from Black on September 20, 2019 and did not receive a voicemail message from Black on September 20, 2019. Mr. Howard's phone records also did not indicate that a phone call was received by him on September 20, 2019.

While the phone records of Mr. Howard and Black are contradictory with Black's phone record showing a call being made to Mr. Howard's cell phone on September 20, 2019 and Mr. Howard's phone record indicating that no such call was on his phone records, the more important issue is whether Mr. Howard received a voicemail message from Black on September 20, 2019. Based upon his practice of checking for missed calls and voicemail messages at the end of each work day, Mr. Howard adamantly denied that he received a voicemail message from Black on September 20, 2019.

Additionally, the testimony and the record indicate that in October, 2018 Black and Mr. Howard exchanged text messages in order to include a grievance filed by Black in a local level hearing that was going to occur on October 31, 2018. (Rx 2; Tr. 108-112) There was no reason for Mr. Howard not to return a voicemail message from Black based on his past practice of

returning calls, voicemail messages and text messages from Black; and based on the fact that there is no evidence of any animosity between Black and Mr. Howard.

Even if Mr. Howard missed the voicemail message that Black testified that he left for Mr. Howard, or if Mr. Howard accidently deleted the voicemail message that Black testified that he left for Mr. Howard, Mr. Howard reasonably believed and credibly testified that he was not aware of any voicemail message from Black on September 20, 2019. As Mr. Howard testified, if he had received a voicemail message, he would have called Black back in accordance with his normal practice.

Moreover, the evidence established that Black never followed up on the voicemail message he testified he left for Mr. Howard on September 20, 2019. Black explained this lack of follow-up because he wanted to give Mr. Howard ample time to return his phone call because Mr. Howard was a very busy person. (Tr. 135) Since Black and Mr. Howard exchanged text messages in October 2018 regarding another grievance filed by Black, sending Mr. Howard a text message would have been appropriate and would certainly take less time for Mr. Howard to respond to than trying to listen to and respond to a voicemail message. Black neither called Mr. Howard again, nor sent him a text message after September 20 and until January 28, 2020, one week before he filed the original charge.

Respondent submits, consistent with the GC Memo 19-01, that if Black actually left a voicemail message for Mr. Howard on September 20, 2019, Mr. Howard had a reasonable excuse for not returning the voicemail message since he reasonably and creditably testified that he never received a voicemail message. If Mr. Howard somehow missed the voicemail message or accidently deleted the voicemail message supposedly left by Black, there is no indication that the failure to get back with Black was intentional or the result of some animosity between Black and

Mr. Howard. On the contrary, any failure to return a call to Black following a voicemail message under these circumstances would not constitute more than mere negligence with a reasonable excuse for not responding to the voicemail message. But for the new principle set forth by General Counsel Robb in GC Memo 19-01 concerning a new interpretation of the duty of fair representation under Section 8(b)(1)(A) of the Act, any unintended failure to return a voicemail message that Mr. Howard did not know he had received would be considered mere negligence and not subject to the new directive given by General Counsel Robb to the Regional Directors. For this reason, Respondent submits that the evidence introduced at the hearing regarding paragraph 6(b) of the Complaint does not support a finding of an 8(b)(1)(A) violation by Mr. Howard.

D. <u>The Complaint Allegations in Paragraph 6(c)</u>

Paragraph 6(c) of the Complaint as amended reads: "About January 28, 2020 Black, in writing via text message to union president Kenny Howard, asked Respondent to provide him with information regarding the status of the excessive overtime pay grievances filed on his behalf on July 26, 2019 and September 17, 2019.[4] It is undisputed that Black sent a text message to Mr. Howard on January 28, 2020. (Tr. 74; GC Ex. 6(a) and 6(b)) The text message from Black (GC Ex. 6(a) and 6(b)) makes no request for information about his grievances or the status of his pending grievances. When asked on direct examination what Black was attempting to convey in this text message, Black responded that I was wanting information about when my grievances would be heard. (Tr. 74-75) That testimony is completely inconsistent with the content of the text message. Later, after additional prompting by Counsel for the General Counsel, Black testified that the text message was to convey a message of his frustration of not having information

[4] As amended during the hearing by Counsel for General Counsel. (Tr. 31)

concerning his grievances. (Tr. 78-80) This testimony is also inconsistent with the content of the text message sent by Black to Mr. Howard on January 28, 2020.

Black's testimony in this regard is also inconsistent with his prior testimony throughout the hearing that he had received information from Mr. Thomes from July 2019 through January 28, 2020 that his excessive overtime pay grievances filed on July 26, 2019 and September 17, 2019 were still pending and was waiting on a local level hearing to be scheduled. Any communication with Mr. Howard either by telephone call, voicemail message or text message would not have provided Black any additional or different information about the status of his excessive overtime pay grievances that Black already received from Mr. Thomes.

Mr. Howard testified that once he had an opportunity to review the January 28, 2020 text message from Black he took it that Black was filing charges against him because Black listed all of the Labor Board locations. Mr. Howard further testified that he did not send a return text message to Black or call him in response to the text message because he had been advised by counsel and other business agents at other locals that if you receive information that if someone is filing charges, you should not contact that person because there could be an allegation later that the return text or phone call was a form of intimidation or threat to the person who sent the text message. (Tr. 236; 240-241)

Since Black did not include in his text message that he was requesting information concerning his excessive overtime pay grievances, Counsel for the General Counsel argued that the allegation in paragraph 6(c) of the Complaint is based upon the intention of Black in sending the text message to Mr. Howard, not the actual content of the January 28, 2020 text message. In paragraph 6(c) of the Complaint, Counsel for the General Counsel is basing the allegation that Mr. Howard failed or refused to provide Black with information regarding the status of his excessive

overtime pay grievances based on the January 28, 2020 text message when no such request for information was contained within the text message, and Mr. Howard's uncontroverted testimony that he did not consider the January 28, 2020 text message requesting information, but informing Mr. Howard that Black was going to file unfair labor practice charges against him. Black may have had a different intention, but Respondent submits that Mr. Howard cannot be criticized for his interpretation of the content of the January 28, 2020 text message was much different than that of Black. In any event, Respondent submits that the January 28, 2020 text message from Black to Mr. Howard does not contain any request for information regarding the status of his excessive overtime pay grievances.

E. Counsel for General Counsel's allegation that Respondent did not have a established reasonable procedure in place to keep track of grievances is not supported by the evidence introduced at the hearing.

Even though there is no allegation in the Complaint that any UPS grievance has been misplaced, forgotten about or Respondent has lost track of since Mr. Howard has become the Business Representative for the UPS employees represented by Respondent at the four UPS facilities in the Dayton, Ohio, Counsel for the General Counsel questioned Mr. Howard repeatedly about the processing of UPS grievances at the West Carrollton facility. When Mr. Howard testified that the grievances are kept in his office in a folder by each center or facility and by classification in chronological order, Counsel for the General Counsel asked Mr. Howard if he had a spreadsheet or any way to track how long grievances had been pending, Mr. Howard responded that he had all the grievances in the folders in chronological order. Counsel for the General Counsel may have an opinion that spreadsheet and computer technology is necessary in order to have a reasonable procedure or system to track grievances, the testimony of Mr. Howard demonstrates that he has been able to keep track of grievances and with no reports of grievances being misplaced or

forgotten, through his current system. Additionally, the current procedure of giving the responsibility to select which grievances are going to be heard at a particular local level hearing to the stewards also, according to Mr. Howard, works, allowing hot topic grievances to be heard out of order in order to avoid issues getting out of control when hearing grievances out of order can solve or prevent a multitude of grievances being filed over the same issue. (Tr. 271-279)

There is no allegation in the Complaint alleging that Respondent lost track of, misplaced or forgot about any of Black's excessive overtime pay grievances, or grievances of any other UPS bargaining unit members since Mr. Howard became the business representative for all of the UPS employees represented by Respondent in January, 2016. Additionally, there is no allegations in the Complaint that Respondent does not have an established reasonable procedural system in place to keep track of UPS grievances as demonstrated by the testimony of Mr. Howard. For these reasons, Respondent submits that any argument made by Counsel for the General Counsel that a violation of Section 8(b)(1)(A) of the Act occurred as a result of losing track of, misplacing or otherwise forgetting about a grievance without a reasonable procedure or system in place to track grievances should be rejected as not being included in the Complaint. Moreover, the evidence introduced at the hearing simply does not support any such allegation.

IV. CONCLUSION

The evidence introduced at the hearing simply did not support the allegations contained in the Complaint that Respondent failed and refused to provide information to Black concerning the status of his excessive overtime pay grievances filed on July 26, 2019 and September 17, 2019. To the contrary, Black testified that from July 2019 through January 28, 2019 Mr. Thomes consistently informed him that his grievances remained pending and that it would be heard when Mr. Howard was able to schedule a local level hearing. Black also admitted that he knew when

the local level hearing was scheduled to hear his grievances, Mr. Thomes would be the individual who would inform him of that information.

While Black may have been frustrated because "9.5 grievances" he filed in 2016 were not heard at the local level and resolved until August and October 2018, Mr. Howard explained that a number of the "9.5 grievances" were held up because of one of the "9.5 grievances" from another local union was processed to the arbitration step of the grievance procedure and it took some time to obtain a decision from the arbitrator.

Additionally, the failure of Mr. Howard to respond to a voicemail message Black allegedly left for Mr. Howard on his cell phone, which Mr. Howard creditably denied that he had ever received, simply does not establish a failure or refusal to provide information to Black regarding the status of his excessive overtime pay grievances. A single incident from July 2019 through January 2020 does not establish a violation of the duty of fair representation under Section 8(b)(1)(A) of the Act.

Finally, Respondent submits that the text message sent by Black to Mr. Howard on January 28, 2020 was not a request for information concerning his excessive overtime pay grievance but was just a message that he was going to file an unfair labor practice charge against the Respondent, which ultimately alleged a failure to represent in the processing of grievances rather than a failure to provide the information on the status of his pending grievances.

For all of these reasons, Respondent submits that the Complaint in this matter should be dismissed.

Respectfully submitted,

DOLL, JANSEN & FORD

____/s/ John R. Doll_____
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion for Postponement was served upon the Acting Regional Director for Region 9 and Ryan Black-Charging Party by electronic mail on this 30th day of September, 2020.

_____/s/ John R. Doll_____